

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

March 19, 2010

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on March 3, 2010, makes reference to County Communication No. 08-81, from the Planning Director, transmitting documents relating to a request from Frances Feeter for a Conditional Permit to operate Hale Maluhia, a transient vacation rental (TVR), on approximately 20,937 square feet within the RU-0.5 Rural District at 8770 Kamehameha V Highway, Pukoo, Molokai, Hawaii (TMK: (2) 5-7-07:011) (the subject property). The subject property is owned by Christine Feeter, the daughter of Bill and Frances Feeter.

Your Committee notes that the Department of Planning initially recommended denial of the Conditional Permit and related Special Use Permit. The Molokai Planning Commission (Commission), at its meeting of June 13, 2007, recommended that the Council defer action on the Conditional Permit application until the Commission acts on the Special Use Permit; the Commission also deferred action on the Special Use Permit until the Molokai Community Plan is updated. In February 2008, the Department of Planning transmitted the Commission's recommendation for deferral to the Council, without any proposed legislation.

Two years later, your Committee received correspondence from the Planning Director, informing your Committee that the Commission had reconsidered its earlier recommendation and, at its meeting of March 25, 2009, recommended approval of the project. The Planning Director transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING FRANCES FEETER, BILL FEETER, AND CHRISTINE FEETER A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL WITHIN STATE RURAL DISTRICT AND RU 0.5 RURAL ZONING DISTRICT, FOR PROPERTY SITUATED AT 877 KAMEHAMEHA V HIGHWAY, PUKO'O, MOLOKA'I, HAWAII; TAX MAP KEY NO. (2) 5-7-007:011". The purpose of the proposed bill is to grant a three-year Conditional Permit to Frances Feeter, Bill Feeter, and Christine Feeter to operate a TVR in a three-bedroom dwelling on the subject property, subject to ten conditions.

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In addition to standard conditions, the Commission recommended that project-specific conditions be added to require submittal of a compliance report with any request for a time extension; on-site parking; the posting of a fire evacuation plan; smoke detectors; and the permit number in all advertising. The Commission also recommended that the provision concerning extensions of the Conditional Permit be qualified to reference the pending Molokai Community Plan update and any unresolved complaints or requests for service.

Your Committee notes that the Commission did not concur with the Department of Planning's earlier recommended findings and conclusions as to why the project should be denied, as set forth in the minutes of its meeting of March 25, 2009, and in the document memorializing the Commission's decision, entitled "Molokai Planning Commission Decision and Order April 8, 2009 Meeting". Your Committee finds the Commission's reasoning persuasive, including its findings and conclusions that the proposed project will not substantially change the social infrastructure of the area; that the proposed project is in substantial harmony with the density and intensity of permitted uses within the Rural zoning district; that the proposed use is similar, related, or compatible to those permitted uses; that the proposed project will have positive socioeconomic impacts; that a degree of mixed residential and commercial/tourism uses may be adequately tolerated in the area if well managed and closely supervised; and that there is a need for the use.

Your Committee also notes that the Department of Planning advised, at your Committee's meeting, that it agreed with the Commission's recommended three-year approval, subject to the Commission's recommended conditions and two additional conditions.

Further, your Committee notes that there is only one other TVR permitted on Molokai, and that TVRs should be regulated and limited.

Your Committee voted to recommend that four new conditions be added to the proposed bill.

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The first new condition requires Frances and/or Bill Feeter to reside at their home at 311 Kamehameha V Highway (approximately 12 miles from the subject property) and to be available to oversee the TVR use of the property when occupied. It also prohibits the TVR from operating when all three permittees are off-island overnight, and requires that signage stating their names and contact number be posted on the TVR property. The condition is intended to ensure supervision, accountability, and ease of contact if management issues arise. Your Committee felt it necessary to incorporate the condition because an owner or manager does not reside on the subject property.

The second new condition requires the permittees to inform the Department of Finance, Real Property Tax Division, that they are operating a TVR on the property. The third new condition requires the permittees to provide the Department of Planning with copies of specified tax licenses and confirmation that such taxes have been paid each year that the TVR is in operation.

Finally, in accordance with the Department of Planning's recommendation, your Committee recommended that a new condition be added to clarify that the permit shall be valid only for so long as the Feeters or property owner live on Molokai.

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading, incorporating the revisions made by your Committee, and filing of the communication. Committee Chair Baisa, Vice-Chair Molina, and members Mateo, Medeiros, Nishiki, Pontanilla, and Victorino voted "aye". Committee members Johnson and Kaho`ohalahala were excused.

Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING FRANCES FEETER, BILL FEETER, AND CHRISTINE FEETER A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL WITHIN THE STATE RURAL DISTRICT AND COUNTY RU-0.5 RURAL ZONING DISTRICT, FOR PROPERTY SITUATED AT 8770 KAMEHAMEHA V HIGHWAY, PUKOO, MOLOKAI, HAWAII; TAX MAP KEY NO. (2) 5-7-007:011", approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

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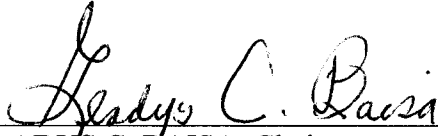
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Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2010), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING FRANCES FEETER, BILL FEETER, AND CHRISTINE FEETER A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL WITHIN THE STATE RURAL DISTRICT AND COUNTY RU-0.5 RURAL ZONING DISTRICT, FOR PROPERTY SITUATED AT 8770 KAMEHAMEHA V HIGHWAY, PUKOO, MOLOKAI, HAWAII; TAX MAP KEY NO. (2) 5-7-007:011", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 08-81 be FILED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



GLADYS C. BAISA, Chair

ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE GRANTING FRANCES FEETER, BILL FEETER, AND CHRISTINE FEETER A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL WITHIN THE STATE RURAL DISTRICT AND COUNTY RU-0.5 RURAL ZONING DISTRICT, FOR PROPERTY SITUATED AT 8770 KAMEHAMEHA V HIGHWAY, PUKOO, MOLOKAI, HAWAII; TAX MAP KEY NO. (2) 5-7-007:011

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to Frances Feeter, Bill Feeter, and Christine Feeter to operate a transient vacation rental within the State Rural District and County RU-0.5 Rural Zoning District. The site is identified for real property tax purposes by Tax Map Key Number (2) 5-7-007:011, comprising approximately 20,937 square feet of land situated at 8770 Kamehameha V Highway, Pukoo, Molokai, Hawaii.

SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That full compliance with Title 19 and all applicable governmental requirements shall be rendered, including the conditions of the Special Use Permit (SUP2 2001/0024).
2. That the Conditional Permit shall be valid for a period of three (3) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this three-year period may be granted pursuant to Section 19.40.090, Maui County Code. Further, that any extension request shall come back before the Commission. However, should the proposal be inconsistent with policies within the Molokai Community Plan after it is next updated, or if any complaints or open Requests for Service regarding the use approved under the CP are unresolved at the time of hearing of time extension, then no extension shall be granted.
3. That the Conditional Permit shall be nontransferable unless the Council approves the transfer by ordinance.
4. That Frances Feeter, Bill Feeter, and Christine Feeter, their successors and permitted assigns shall exercise reasonable due care as to third parties with respect to

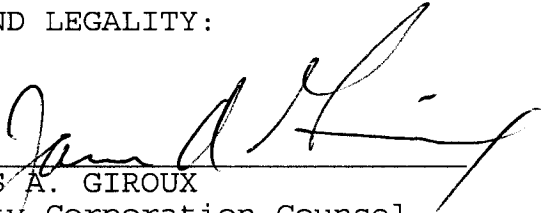
all areas affected by subject Conditional Permit and shall procure at their own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending Frances Feeter, Bill Feeter, and Christine Feeter and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this Permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Frances Feeter, Bill Feeter, and Christine Feeter of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.

5. That Frances Feeter, Bill Feeter, and Christine Feeter shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.
6. That five (5) copies of a Compliance Report shall be submitted to the Department of Planning for review and approval with any request for a time-extension amendment.
7. That parking shall be provided on-site for each bedroom in the Transient Vacation Rental (TVR).
8. That a fire evacuation plan shall be posted in the interior of each guest room.
9. That all smoke detectors shall be operable and tested monthly. Older homes that were not equipped with hard wire smoke detectors must be battery operated at a minimum. A smoke detector shall be installed in each sleeping area. A log of monthly testing shall be maintained by the proprietor.
10. That the proprietor must include the number of the permit in all advertising.

11. That Frances Feeter and/or Bill Feeter shall reside at 311 Kamehameha V Highway, Molokai, and shall be available to oversee the transient vacation rental use of the property when it is occupied. The transient vacation rental shall not operate during any time that Frances Feeter, Bill Feeter, and Christine Feeter are all off-island overnight. Signage shall be posted at the transient vacation rental property stating their names and contact number.
12. That Frances Feeter, Bill Feeter, and Christine Feeter shall inform the Department of Finance, Real Property Tax Division, that they are operating a transient vacation rental on the subject property.
13. That Frances Feeter, Bill Feeter, and Christine Feeter shall provide the Department of Planning a copy of the general excise tax license and transient accommodation tax license and confirmation that the general excise tax and transient accommodation tax have been paid each year the transient vacation rental is in operation.
14. That the permit shall be valid only for so long as the Feeters or the property owner live on Molokai.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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